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OPEN-ENDED AD HOC WORKING GROUP OF
LEGAL AND TECHNICAL EXPERTS ON
LIABILITY AND REDRESS IN THE CONTEXT OF
THE CARTAGENA PROTOCOL ON BIOSAFETY
Fourth meeting
Montreal, 22-26 October 2007
Item 3 of the provisional agenda*

RECENT DEVELOPMENTS IN INTERNATIONAL LAW RELATING TO LIABILITY AND REDRESS, INCLUDING THE STATUS OF INTERNATIONAL ENVIRONMENT-RELATED THIRD PARTY LIABILITY INSTRUMENTS

Note by the Executive Secretary

I. INTRODUCTION

1. The Open-ended Ad Hoc Working Group of Legal and Technical Experts on Liability and Redress in the Context of the Cartagena Protocol on Biosafety (the "Working Group", hereinafter) held its third meeting from 19 to 23 February 2007 in Montreal. At the end of that meeting, the Working Group requested, among other things, the Secretariat to continue to gather and make available, at its fourth meeting, information on recent developments in international law relating to liability and redress, including the status of international environment-related third party liability instruments.

2. This subject has been a standing item for consideration by the Working Group since its first meeting. At its last meeting, the Working Group had before it an information document on recent developments in international law relating to liability and redress, including the status of international environment-related third party liability instruments (UNEP/CBD/BS/WG-L&R/3/INF/2), which was an update of similar information documents prepared for its earlier meetings.

3. The present note again updates the information gathered and made available for the last meeting of the Working Group, as regards new developments in international law relating to liability and redress. It also contains information on the status of international environment-related third party liability treaties as of September 2007. The information on the status of international environment-related third party liability treaties is presented as an annex to this document.

* UNEP/CBD/BS/WG-L&R/4/1

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II. RECENT DEVELOPMENTS IN INTERNATIONAL LAW RELATING TO LIABILITY AND REDRESS, INCLUDING "SOFT LAW"

4. This section presents a summary of recent developments in the field of liability and redress within the processes of the United Nations Environment Programme, the Convention on Environmental Impact Assessment in a Transboundary Context, the Antarctic Treaty System, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal and the Basel Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and their Disposal, the International Civil Aviation Organization, the Framework Convention for the Protection of the Marine Environment of the Caspian Sea, the Barcelona Convention for the Protection of the Mediterranean Sea Against Pollution, and the International Maritime Organization.

A. United Nations Environment Programme

5. The United Nations Environment Programme convened an Advisory Expert Group Meeting on Liability and Compensation for Environmental Damage from 16 to 17 January 2007 in Geneva. The meeting developed a list of recommendations relating to approach, content and scope of its work. There has been a consensus in the Expert Group that:

(a) The format of its work would be guidelines for the development of national legislation on environmental liability and compensation;

(b) The recognized basic principle is the Polluter-Pays-Principle;

(c) The guidelines will not address the issue of transboundary environmental damage;

(d) The guidelines would have to be straightforward, user-friendly, flexible, yet sufficiently detailed and informative by giving relevant examples;

(e) In order to maximize the utility of the guidelines for the target audience, complementary capacity building efforts to raise awareness and basic understanding of environmental damage and liability issues would be desirable.

6. Furthermore the Group agreed not to include in the guidelines environmental damage: (a) caused by armed conflict, hostilities, civil war or insurrections, natural phenomena, etc. (b) already covered by existing international conventions; (c) pollution of a diffuse character or imminent threats to it where it is impossible to establish a causal link; (d) caused by operational activities the main purpose of which is to serve national defence or international security, etc. As regards the types of compensable damage, the Expert Group agreed to include (a) personal injury; (b) damage to property; (c) pure economic loss; and (d) impairment of the environment.

7. The Expert Group has considered and generally agreed on a number of other issues related to liability and compensation rules and procedures for environmental damage. These include assessment of damage to the environment, channelling of liability, standard of liability, the question of the right to bring claim, jurisdiction of courts and choice of law.

8. The Advisory Expert Group is scheduled to have its second meeting from 31 October to 2 November 2007 in Geneva. The Group is expected to consider Draft Guidelines for the Development of National Legislation on Liability and Compensation for Environmental Damage.

B. Convention on Environmental Impact Assessment in a Transboundary Context

9. As outlined in document UNEP/CBD/BS/WG-L&R/3/INF/2 prepared for the previous meeting of this Working Group, Romania requested the establishment of an inquiry commission under the Convention on Environmental Impact Assessment in a Transboundary Context ("Espoo Convention"). The inquiry concerned work authorized by the Ukraine on the Danube-Black Sea Navigation Route at the border of the two countries. A Commission was established and presented its final report in July 2006, finding that the construction work was likely to have a number of significant adverse transboundary impacts.

10. The report of the Commission recommended the organization of a Bilateral Research Programme within the framework of bilateral cooperation under the Espoo Convention. According to a review of the inquiry procedure that was prepared for the tenth meeting of the Convention's Working Group on Environmental Impact Assessment, the opinion of the Inquiry Commission required Ukraine to send a notification about the canal project to Romania, that there was to be consultation between the Parties, Romania was to be given an opportunity to comment on the project, and public participation in the two countries should be ensured. The final decision about the project should also be sent to Romania. 1/

11. The review of the inquiry procedure states that Ukraine had yet to send a notification. In January of this year, Romania made a submission to the Implementation Committee of the Espoo Convention expressing "concerns about Ukraine's compliance with its obligations under the Convention, in light of the opinion of the inquiry commission."2/ The Implementation Committee considered the submission at its 12th meeting in June 2007. 3/ Both Romania and Ukraine have yet to clearly indicate their positions regarding bilateral cooperation under the Convention. 4/

12. The Compliance Committee of the *Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* ("Aarhus Convention") also continued to consider follow-up on specific cases of non-compliance with the Convention, including the decision by the Parties to the Aarhus Convention finding the Ukraine to be non-compliant with certain provisions of the Convention in association with the work on the Danube-Black Sea Navigation Route (decision II/5b). At its fourteenth meeting held in December 2006, the Compliance Committee of the Aarhus Convention was informed that no further information had been received from Ukraine regarding its implementation strategy for decision II/5b. The Government of Ukraine had earlier requested to delay the submission of the strategy until the end of 2006. The Government of Romania informed the Committee of a recent bilateral meeting between Romanian and Ukrainian authorities during which the latter had indicated that work on the canal had resumed and would be finished by February 2007. The Government of Romania was of the opinion that the Ukraine "had failed to demonstrate that it intended to act on the findings of the Espoo Convention Inquiry Commission" and that Romania was not aware of any public consultations having been carried out, as had been recommended by the Compliance Committee of the Aarhus Convention, in connection with the preparation of Ukraine's strategy for the implementation of decision II/5b. 5/

1/ "Inquiry Procedure: Review of the first inquiry procedure: Note by the secretariat" prepared for the Working Group on Environmental Impact Assessment of the Convention on Environmental Impact Assessment in a Transboundary Context, doc. ECE/MP.EIA/WG.1/2007/5 (12 March 2007) at para. 12.

2/ *Ibid.* at para. 13.

3/ The report of the meeting was not available at the time of writing.

4/ *Ibid.*

5/ "Report of the Fourteenth Meeting" of the Compliance Committee of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (15 May 2007), doc. ECE/MP.PP/C.1/2006/8 at para. 21.

13. At the fifteenth meeting of the Compliance Committee in March 2007, the Committee "noted with regret that the Government of Ukraine had not provided the strategy for implementing the Convention requested by the Meeting of the Parties through decision II/5b". 6/ The sixteenth meeting of the Compliance Committee was held in June 2007, however, this matter does not appear to have been discussed. The seventeenth meeting of the Compliance Committee was held in September 2007 but the report of the meeting was not available at the time of writing.

14. It might also be noted that in September 2004, Romania brought a case against Ukraine to the International Court of Justice concerning the maritime boundary between the two States in the Black Sea. The case is still pending.

C. Antarctic Treaty System

15. The thirtieth Antarctic Treaty Consultative Meeting (ATCM) was held in New Delhi, India in April-May 2007. Included on the agenda was consideration of 'Liability: Implementation of Decision 1 (2005)', i.e. the decision by which annex VI on 'Liability arising from Environmental Emergencies' was adopted. During the meeting, the United Kingdom introduced a document on 'Antarctic Liability: Domestic Implementation of Annex VI to the Environmental Protocol. Key Issues and Areas of Difficulty'.7 The document contains a summary of issues and questions raised by Parties concerning the domestic implementation of the annex.

16. Sweden has ratified the annex and enacted legislation implementing its rules. Over 20 countries have begun their internal review process. ATCM XXXI will be held in Kiev, Ukraine in June 2008 and delegations are urged to present information on their domestic implementation of the annex or their work in progress. 8/

D. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal & Basel Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and their Disposal

17. At its fourth session in July 2005, the Open-ended Working Group of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal ("Basel Convention") adopted decision OEWG-IV/7 in which it requested the Secretariat to report to the Open-ended Working Group, as a result of the Secretariat's consultations with relevant institutions, on the options that may be available with respect to the requirement of insurance, bonds or other financial guarantees in Article 14 of the Basel Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and their Disposal ("Basel Protocol") and the financial limits established under the Basel Protocol.9 The Secretariat prepared the requested note 10/ which was considered by the fifth session of the Open-ended Working Group.

6/ "Report of the Fifteenth Meeting of the Compliance Committee" of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (15 May 2007), doc. ECE/MP.PP/C.1/2007/2 at para. 24.

7/ Doc. IP054.

8/ XXX ATCM, "Final Report" doc. FR001 at paras. 105, 107 and 109.

9/ See "Report of the Open-ended Working Group of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal on the work of its fourth session" (13 July 2005) doc. UNEP/CHW/OEWG/4/18, decision OEWG-IV/7 at para. 9.

10/ "Implementation of the decisions adopted by the Conference of the Parties at its seventh meeting: Note by the Secretariat. Addendum: Basel Protocol on Liability and Compensation: insurance, other financial guarantees and financial limits" (2 March 2006) doc. UNEP/CHW/OEWG/5/2/Add.7.

18. At their eighth meeting in November-December 2006, the Parties to the Basel Convention adopted decision VIII/25 on the 'Protocol on liability and compensation'. In the decision, the Parties requested the Secretariat "to elaborate further on three of the options that may be available with respect to the requirement of insurance, bonds or other financial guarantees as presented in its note, ensuring that at least one option explored provides guidance on steps that could be taken at the national level, that another explores steps that could be taken at the international level and that a third explores steps that could be taken at the regional level". 11/ The Secretariat is to report on its findings to the Open-Ended Working Group of the Basel Convention.

19. In response, the Secretariat has prepared a document on the 'Basel Protocol on Liability and Compensation: insurance, bonds or other financial guarantees'. 12/ The note elaborates on certain options presented in the earlier document, namely:

- at the national level: compulsory schemes for insurance companies implemented by the adoption of national legislation and government-backed insurance pools for very large, occasional risks;

- at the regional level: investment insurance facility financed by international/regional financial institutions; and

- at the international level: funds sourced from private industry.

20. The note was considered by the sixth session of the Open-ended Working Group held 3-7 September 2007. The report of the meeting was not available at the time of writing.

E. International Civil Aviation Organization (ICAO)

21. In March 2007, the ICAO Council decided to convene a sixth meeting of the Special Group on the Modernization of the Rome Convention. The sixth meeting of the Special Group was held from 26 to 29 June 2007. At the conclusion of the meeting, there was broad agreement in the Special Group that it had completed its work on the two draft conventions and it decided to recommend to the Council to convene a session of the Legal Committee to further develop the texts. The Council, at its 182nd session in November-December 2007, will consider the report of the sixth meeting of the Special Group and will decide on the future course of action, including whether to convene the Legal Committee, possibly in the first half of 2008. This could lead to a diplomatic conference sometime in 2009.

22. A detailed discussion of the draft Convention on Compensation for Damage Caused by Aircraft to Third Parties, in case of Unlawful Interference and the draft Convention on Compensation for Damage Caused by Aircraft to Third Parties was provided in document UNEP/CBD/BS/WG-L&R/3/INF/2 prepared for the previous meeting of this Working Group. The discussion below, therefore, reflects changes to the draft Conventions made since the preparation of the previous document and aspects of the draft Conventions that were not otherwise discussed.

Draft Convention on Compensation for Damage Caused by Aircraft to Third Parties, in case of Unlawful Interference ("Unlawful Interference Convention")

23. Article 2(1) of the draft Convention provides that the Convention would apply to damage to third parties which occurs in the territory of a State Party when the damage is caused by an aircraft in flight as

11/ See "Report of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal on its eighth meeting" (5 January 2007), doc. UNEP/CHW.8/16, decision VIII/25 at para. 6.

12/ "Basel Protocol on Liability and Compensation: insurance, bonds or other financial guarantees: Note by the Secretariat" (29 June 2007) doc. UNEP/CHW/OEWG/6/14.

a result of an act of unlawful interference when the operator has its principal place of business or, if it has no such place, its permanent residence, in another State whether or not a party. According to a progress report submitted to ICAO Assembly, this "Article ensures that damage in any State Party would be compensated, whether or not the operator is from a State Party." 13/ Article 26 also allows for the possibility of the Convention applying to damage in a non-State Party – where an operator from a State Party causes damage in a non-State Party, the Conference of the Parties (COP) to the Supplementary Compensation Mechanism (see below) may decide to provide financial support to the operator.

24. Article 2(1) has an international dimension, suggesting that the Convention only applies where damage by the aircraft of an operator from one State Party causes damage in the territory of another State Party. Article 2(2) of the draft Convention also allows a State Party to apply the Convention to damage that occurs in its own territory when the operator also has its principal place of business or, if it has no such place, its permanent residence, in that Party.

25. Under the draft Convention, it is generally the operator only who can be held liable. The liability of the operator is strict and liability is capped based on the weight of the aircraft although the cap may be broken in exceptional circumstances.

26. The draft Convention foresees the creation of an independent organization called the Supplementary Compensation Mechanism (SCM). The SCM would comprise a Conference of the Parties which would be the principal policy-making organ, consisting of all State Parties, and a Secretariat headed by a Director. "The COP would, *inter alia*, establish regulations of the SCM, Guidelines for Compensation, Guidelines on Investment, fix the contributions to be made to the SCM, and decide the cases where financial support should be given to the operator" as described in paragraph 23, above. 14/ The draft Convention also provides that where an operator fails to remit its required contributions to the SCM, the Director of the Mechanism is to take appropriate measures for recovery of the amount due. Furthermore, each Party is to ensure that certain data is provided to the SCM. Failure to do so could result in the liability of the Party.15/

27. Chapter VII of the draft Convention contains procedural provisions. Generally, actions for compensation can be brought in a single forum, i.e. the courts of the Party where the damage occurred. Judgements entered by a court shall, when they are enforceable in the State Party of that court, be enforceable in any other State Party with a few specific exceptions.

Draft Convention on Compensation for Damage Caused by Aircraft to Third Parties

28. A previous draft of the Convention on Compensation for Damage Caused by Aircraft to Third Parties ("General Risks Convention") placed liability for damage sustained by third parties on the operator so long as the damage was caused by an aircraft in flight or by any person or object falling there-from. A summary of the current text of the draft Convention states that the causal link is simply that the damage to a third party must be caused by an aircraft in flight other than as a result of an act of unlawful interference. 16/

13/ "Progress Report on Compensation for Damage Caused by Aircraft to Third Parties Arising from Acts of Unlawful Interference or from General Risks" Working Paper presented by the Council of ICAO to the 36th session of the ICAO Assembly, doc. A36-WP/11 LE/3 at para. 2.6.1. It should be noted that this document is simply a summary of the texts of the draft Conventions as they stand after the sixth meeting of the Special Group; it does not contain the actual text of the draft Conventions themselves.

14/ *Ibid.* at para. 2.6.8.

15/ See also document UNEP/CBD/BS/WG-L&R/4/INF/3 as prepared for this meeting for a more detailed discussion of the proposed SCM.

16/ *Ibid.* at para. 2.7.1.

29. As with the draft Unlawful Interference Convention described above, the application of the draft General Risks Convention suggests an international element where the damage caused to third parties occurs in one State Party while the operator has its principal place of business or, if he has no such place, its permanent residence, in another State Party. The draft General Risks Convention also includes an opt-in provision for domestic flights.

30. Under a draft Article 9*bis*, neither the owner, lessor or financier retaining title or holding security of an aircraft, not being an operator, can be liable for damages under the Convention or the law of any State Party. According to a relevant report, this "Article is currently in square brackets as the [Special] Group did not take a final position on its inclusion." 17/

31. The procedural articles in the draft General Risks Convention are similar to those in the draft Unlawful Interference Convention. In particular, actions for compensation may only be, in general, brought before the courts of the State Party where the damage occurred.

F. Framework Convention for the Protection of the Marine Environment of the Caspian Sea

32. In November 2003, the littoral states of the Caspian Sea – the Republic of Azerbaijan, the Islamic Republic of Iran, the Republic of Kazakhstan, the Russian Federation and Turkmenistan – agreed to the *Framework Convention for the Protection of the Marine Environment of the Caspian Sea* ("Framework Convention"). The Framework Convention entered into force on 12 August 2006 and has been ratified by all five countries.

33. Article 29 of the Framework Convention foresees the development of rules and procedures on liability and redress: "The Contracting Parties, taking into account relevant principles and norms of international law, shall undertake to develop appropriate rules and procedures concerning liability and compensation for damage to the environment of the Caspian Sea resulting from violations of the provisions of this Convention and its Protocols."

34. The Framework Convention also foresees the development of a number of protocols dealing with pollution and the marine environment and work on some protocols has already begun. It does not appear as though the Parties have begun to develop the appropriate rules and procedures on liability and compensation referred to in Article 29.

G. Barcelona Convention for the Protection of the Mediterranean Sea against Pollution

35. In Barcelona in February 1976, the Conference of Plenipotentiaries of the Coastal States of the Mediterranean Region on the Protection of the Mediterranean Sea adopted the *Convention for the Protection of the Mediterranean Sea against Pollution*. The Convention entered into force in February 1978 and the 21 countries plus the European Union that participate in the Mediterranean Action Plan (MAP) are party to the Convention. Article 12 of the Convention is titled 'Liability and Compensation' and in it, the "Contracting Parties undertake to cooperate as soon as possible in the formulation and adoption of appropriate procedures for the determination of liability and compensation for damage resulting from the pollution of the marine environment deriving from violations of the provisions of this Convention and applicable Protocols."

36. The Convention was revised in Barcelona in June 1995 and re-named the *Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean* ("Barcelona Convention"). In the revised text, Article 12 becomes Article 16 and reads as follows: "The Contracting Parties undertake to cooperate in the formulation and adoption of appropriate rules and procedures for the

17/ *Ibid.* at para. 2.7.4.

determination of liability and compensation for damage resulting from pollution of the marine environment in the Mediterranean Sea Area." 18/ The amended text required the acceptance of at least three-fourths of the Contracting Parties to the Convention in order to enter into force. It achieved this threshold and entered into force on 9 July 2004. As of the end of July 2005, the revised Convention had 17 Parties.

37. Pursuant to then-Article 12, the United Nations Environment Programme commissioned a study on liability and compensation in 1978. The study was distributed during the first Meeting of the Contracting Parties to the Convention in 1979 and then updated and distributed again during the second Meeting of the Contracting Parties held in 1981.

38. More recently, five meetings have been convened to consider the formulation and adoption of appropriate rules and procedures on liability and compensation under the Barcelona Convention. These are:

- The First Meeting of Government-Designated Legal and Technical Experts on the Preparation of Appropriate Rules and Procedures for the Determination of Liability and Compensation for Damage Resulting from Pollution of the Marine Environment in the Mediterranean Sea Area (Brijuni, Croatia; 23-25 September 1997);

- The first Consultation meeting of legal experts on liability and compensation for damage resulting from pollution of the marine environment in the Mediterranean Sea Area (Athens, Greece; 21 April 2003);

- The second Consultation meeting of legal experts on liability and compensation for damage resulting from pollution of the marine environment in the Mediterranean Sea Area (Athens, Greece; 17 June 2005);

- The first meeting of the open-ended working group of Legal and Technical Experts to propose Appropriate Rules and Procedures for the Determination of Liability and Compensation for Damage Resulting from Pollution of the Marine Environment in the Mediterranean Sea Area (Loutraki, Greece; 7-8 March 2006); and

- The second meeting of the open-ended working group of Legal and Technical Experts to propose Appropriate Rules and Procedures for the Determination of Liability and Compensation for Damage Resulting from Pollution of the Marine Environment in the Mediterranean Sea Area (Athens, Greece; 28-29 June 2007).

39. At the March 2006 meeting of the open-ended working group of Legal and Technical Experts to propose Appropriate Rules and Procedures for the Determination of Liability and Compensation for Damage Resulting from Pollution of the Marine Environment in the Mediterranean Sea Area ("open-ended working group"), the experts agreed to take a step-by-step approach to the issue with the development of guidelines as the first step. Accordingly, the MAP Secretariat prepared 'Draft Guidelines on liability and compensation for damage resulting from pollution of the marine environment in the Mediterranean Sea Area' ("Draft Guidelines") as well as an accompanying explanatory text. The Draft Guidelines were considered at the second meeting of the open-ended working group which made some

18/ Reference might also be made to Article 14 of the 1996 *Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal* (not yet in force) and Article 27 of the 1994 *Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil* (not yet in force). Both articles call for, *inter alia*, cooperation in the development of rules and procedures on liability and compensation under the respective protocols.

revisions to them and prepared a draft decision on the adoption of the Draft Guidelines that will be forwarded to the next Meeting of the Contracting Parties to the Barcelona Convention to be held from 15 to 18 January 2008. The discussion below is based on the Draft Guidelines as revised by the second meeting of the experts and as contained in a draft report of the meeting. 19/

40. The Draft Guidelines cover many of the same points being explored by this Working Group. They begin with a purpose section which states, *inter alia*, that the Guidelines aim to further the polluter pays principle. The section also states that the Guidelines do not have a binding character *per se* but "are intended to strengthen cooperation among the Contracting Parties for the development of a regime of liability and compensation for damage resulting from pollution of the marine environment in the Mediterranean Sea Area and to facilitate the adoption by Contracting Parties of relevant legislation" (para. 3).

41. Paragraph 4 states that the Guidelines apply to the activities to which the Barcelona Convention or any of its Protocols applies. This includes the 1995 *Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean* ("SPA Protocol") which, in Article 13, provides that:

> 1. The Parties shall take all appropriate measures to regulate the intentional or accidental introduction of non-indigenous or genetically modified species to the wild and prohibit those that may have harmful impacts on the ecosystems, habitats or species in the area to which this Protocol applies.
>
> 2. The Parties shall endeavour to implement all possible measures to eradicate species that have already been introduced when, after scientific assessment, it appears that such species cause or are likely to cause damage to ecosystems, habitats or species in the area to which this Protocol applies.

42. Section B of the Draft Guidelines speaks to their relationship with other regimes. The Draft Guidelines are without prejudice to existing global and regional environmental liability and compensation regimes, "which are either in force or may enter into force, as indicatively listed in the Appendix to these Guidelines, bearing in mind the need to ensure their effective implementation in the Mediterranean Sea Area" (para. 5). According to the explanatory text to the Draft Guidelines, this provision should be understood as meaning that other international instruments are applicable within the framework of the Guidelines. 20/ Paragraph 6 of the Draft Guidelines states that they are without prejudice to the rules of international law on State responsibility for internationally wrongful acts.

43. Section C of the Draft Guidelines addresses their geographical scope. It states that the Guidelines apply to the Mediterranean Sea Area as defined in Article 1(1) of the Barcelona Convention including such other areas as the seabed, the coastal area and the hydrologic basin as are covered by relevant Protocols to the Barcelona Convention. Three Protocols in addition to the Barcelona Convention have the Mediterranean Sea Area as their scope 21/ while three other Protocols extend their application beyond the

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19/ See "Draft Report of the Second meeting of the open-ended working group of Legal and Technical Experts to propose Appropriate Rules and Procedures for the Determination of Liability and Compensation for Damage Resulting from Pollution of the Marine Environment in the Mediterranean Sea Area" (5 September 2007) doc. UNEP(DEPI)/MED WG.319/4 ("Draft Report").

20/ "Draft Explanatory Text to Draft Guidelines on Liability and Compensation for Damage Resulting from Pollution of the Marine Environment in the Mediterranean Sea Area" (25 June 2007) doc. UNEP(DEPI)/MED WG 319/Inf.4 ("Explanatory Text") at p. 22-23.

21/ The *Protocol for the Prevention and Elimination of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft or Incineration at Sea* (not yet in force); the *Protocol concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea*; and the *Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal* (not yet in force).

Mediterranean Sea Area. 22/ The explanatory text points out that a question remains as to whether the geographic scope of the Guidelines should relate to the damage, incident, activity and/or installation where the activity is carried out. It comments that it would be advisable for the Contracting Parties to the Barcelona Convention to seek to harmonize this point but it does not suggest an answer to the question.23/

44. Section D of the Draft Guidelines covers damage. Paragraph 8 reads: "The legislation of Contracting Parties should include provisions to compensate both environmental damage and traditional damage resulting from pollution of the marine environment in the Mediterranean Sea Area." Paragraph 9 defines environmental damage as meaning "a [measurable] adverse change in a natural or biological resource or [measurable] impairment of a natural or biological resource service which may occur directly or indirectly." The explanatory text states that this wording finds its origins in Article 2(2) of the European Environmental Liability Directive. The word 'measurable' was placed in square brackets during the Athens meeting in June 2007 as a result of a discussion about the threshold of damage and difficulties in measuring damage. 24/

45. The subsequent paragraph sets out the types of compensation that should be included for environmental damage: (a) costs of activities and studies to assess the damage; (b) costs of preventive measures; (c) costs of measures undertaken or to be undertaken to clean up, restore and reinstate the impaired environment; (d) diminution in value of natural or biological resources pending restoration; and (e) compensation by equivalent if the impaired environment cannot return to its previous condition. Paragraph 12 states that the measures referred to in (b) and (c) should be reasonable, i.e. "appropriate, practicable, proportionate and based on the availability of objective criteria and information" while paragraph 13 provides that when compensation is granted for damage referred to in (d) and (e), it should be earmarked for intervention in the environmental field in the Mediterranean Sea Area. At earlier meetings, participants had also discussed using the terms 'ecological damage' or 'damage to biodiversity' but this language has not been included in the Draft Guidelines. 25/

46. Paragraph 14 goes on to define traditional damage as meaning:

(a) loss of life or personal injury;

(b) loss of or damage to property other than property held by the person liable;

(c) loss of income directly deriving from an impairment of a legally protected interest in any use of the marine environment for economic purposes, incurred as a result of impairment of the environment, taking into account savings and costs;

(d) any loss of damage caused by preventive measures taken to avoid damage referred to under sub-paragraphs (a), (b) and (c).

47. Finally in this section, paragraph 15 states that the Guidelines will apply to damage caused by pollution of a diffuse character so long as it is possible to establish a causal link between the damage and

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22/ The *Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities* (not yet in force); the *Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean*; and the *Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil* (not yet in force).

23/ Explanatory Text, *supra* note 18 at p. 31.

24/ Draft Report, *supra* note 17 at para. 27.

25/ For 'ecological damage' see, for example, "Report of the Second Consultation Meeting of Legal Experts on Liability and Compensation" (30 August 2005) doc. UNEP(DEC)/MED WG.280/3 at para. 51; for damage to biodiversity see, for example, "Report: First Meeting of Government-Designated Legal and Technical Experts on the Preparation of Appropriate Rules and Procedures for the Determination of Liability and Compensation for Damage Resulting from Pollution of the Marine Environment in the Mediterranean Sea Area" (7 October 1997) doc. UNEP)OCA)/MED WG.117/4 at part II, para. 2(d) of Annex.

the activities of individual operators. According to the report from the June 2007 meeting, the thinking behind this provision was to exclude joint and several liability "as individual operators should not be called upon to pay for the damage caused by other operators." 26/ The view was also expressed, however, "that the concept of "joint and several liability", such as in the case of the dissemination and cultivation of GMOs, should not necessarily be excluded from the liability and compensation regime." 27/

48. Section F concerns the channelling of liability and paragraph 17 provides that liability for damage covered by the Guidelines is to be imposed on the liable operator. Paragraph 18 defines 'operator' as meaning: "any natural or juridical person, whether private or public, who exercises the *de jure* or *de facto* control over an activity covered by these Guidelines".

49. Section G considers the standard of liability. It provides for a mixed strict- and fault-based liability system. Paragraph 19 provides that the basic standard of liability should be strict but, under paragraph 20, fault-based liability could be applied for cases of damage resulting from activities not covered by any of the Protocols to the Barcelona Convention. Paragraph 21 covers multi-party causation whereby "liability will be apportioned among the various operators on the basis of an equitable assessment of their contribution to the damage."

50. Section H covers exemptions of liability and paragraph 23 provides exemptions from liability for damage caused by acts of war, hostilities, civil war, insurrection, terrorism or *force majeure*.

51. Limitation of liability is covered in section I and paragraph 24 states that financial limits on liability may be established where strict liability applies on the basis of international treaties or relevant domestic legislation. In paragraph 25, the Contracting Parties are invited to regularly re-evaluate the appropriate extent of the amounts of financial limits, taking into account such things as the potential risks posed to the environment by the activities covered by the Guidelines.

52. Section J speaks to time limits and paragraph 26 provides for a two-tier system of time limits: a shorter period (e.g. three years) from the date of knowledge of the damage or the identification of a liable operator, whichever is later, and a longer period from the date of the incident (e.g. 30 years). Paragraph 27 explains that for an incident consisting of a series of occurrences having the same origin, the time limits should run from the date of the last such occurrence. For an incident consisting of a continuous occurrence, the time limits should run from the end of the continuous occurrence.

53. Section K addresses the financial and security scheme. Paragraph 28 states that "Contracting Parties, after a period of five years from the adoption of these Guidelines, may, on the basis of the products available on the insurance market, envisage the establishment of a compulsory insurance regime."

54. Paragraph 29 in section L concerns a Mediterranean Compensation Fund. It provides that the Contracting Parties should explore the possibility of establishing such a fund "to ensure compensation where the damage exceeds the operator's liability, where the operator is unknown, where the operator is incapable of meeting the cost of damage and is not covered by a financial security or where the State takes preventive measures in emergency situations and is not reimbursed for the cost thereof."

55. Section N covers action for compensation. Paragraph 31 states that the legislation of Contracting Parties should ensure that actions for compensation in respect of environmental damage are as widely accessible to the public as possible. Paragraph 32 states that the legislation of Contracting Parties should

26/ Draft Report, *supra* note 17 at para. 32.

27/ *Ibid.* at para. 33.

also ensure that natural and juridical persons that are victims of traditional damage can bring actions for compensation in the widest manner possible.

56. The draft decision that accompanies the Draft Guidelines calls on the Contracting Parties to the Barcelona Convention to take the necessary measures, as appropriate, to implement the Guidelines and to report on their implementation to the 17th meeting of the Contracting Parties to be held in 2011. The draft decision also provides for the establishment of a "working group of legal and technical experts to facilitate and assess the implementation of the Guidelines and make proposals regarding the advisability of additional action relating, *inter alia*, to compulsory insurance, a supplementary compensation fund and the development of a legally binding instrument for the consideration of the Meeting of the Contracting Parties in 2013". Finally, it includes three requests to the MAP Secretariat asking it to: prepare a format for reporting on the implementation of the Guidelines for the 16th Meeting of the Contracting Parties in 2009; provide assistance with the implementation of the Guidelines as requested; and prepare a draft assessment report on the implementation of the Guidelines for the consideration of the working group of legal and technical experts established elsewhere in the decision.

H. International Maritime Organization (IMO)

Compensation for oil pollution damage: STOPIA 2006 & TOPIA 2006

57. In 2005, the International Group of P&I (Protection and Indemnity) Clubs voluntarily created two agreements: the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) and the Tanker Oil Pollution Indemnification Agreement (TOPIA). On 20 February 2006, revised versions of both STOPIA and TOPIA (known as "STOPIA 2006" and "TOPIA 2006", respectively) came into effect for incidents occurring on or after this date.

58. STOPIA 2006 is a legally binding agreement between the owners of small tankers (less than 29,548 tons) which are insured against oil pollution risks by the International Group of P&I Clubs. It is intended "to provide a mechanism for shipowners to pay an increased contribution to the funding of the international system of compensation for oil pollution from ships, as established by the 1992 Civil Liability Convention (CLC 92), the 1992 Fund Convention and the 2003 Supplementary Fund Protocol" and to ensure that the overall costs of claims falling under this system are shared approximately equally between shipowners and oil receivers. 28/ The shipowners agreed to STOPIA 2006 in order to demonstrate support for the international compensation system.

59. Under STOPIA 2006, owners of small tankers will indemnify the 1992 Fund in respect of the Fund's liability for the difference between the shipowner's limit of liability under CLC 92 and 20 million Special Drawing Rights (Clause IV).

60. STOPIA 2006 does not affect the rights of victims of oil spills under the 1992 Fund and shipowners pay any indemnification to the 1992 Fund rather than to claimants directly. The 1992 Fund is not a party to STOPIA 2006 but the Agreement is intended to confer legally enforceable rights on the 1992 Fund and it provides that the 1992 Fund may bring proceedings in its own name in respect of any claim under STOPIA 2006 (Clause XI(A)). Insurers are not parties to the Agreement either but all Clubs (i.e. protection and indemnity associations in the International Group of P&I Clubs) have amended their rules to provide shipowners with cover against liability to pay indemnification under STOPIA 2006.29/ Clause XI(C) of STOPIA 2006 also authorizes Clubs to enter into ancillary arrangements enabling the 1992 Fund to enjoy a direct right of action against the relevant Club in respect of any claim under STOPIA 2006.

28/ "Explanatory Note" to STOPIA 2006.

29/ *Ibid.*

61. TOPIA 2006 has a similar object to that of STOPIA 2006, i.e. providing a mechanism for shipowners to pay an increased contribution to the funding of the international system of compensation for oil pollution from ships. TOPIA provides for shipowners to indemnify the Supplementary Fund (created by the 2003 Supplementary Fund Protocol) for 50% of the compensation paid by the Supplementary Fund under the Protocol for Pollution Damage caused by tankers in States party to the Protocol.

62. TOPIA 2006 is a legally binding agreement between the owners of tankers which are insured against oil pollution risks by the International Group of P&I Clubs. As with STOPIA 2006, TOPIA 2006 does not affect the rights of victims of oil spills under the 1992 Fund and the Supplementary Fund, and the shipowner pays any indemnification to the Supplementary Fund rather than directly to claimants. The Supplementary Fund is not a party to TOPIA 2006 but the Agreement is intended to confer legally enforceable rights on the Supplementary Fund and the Supplementary Fund may bring proceedings in its own name in respect of any claim under TOPIA 2006. Insurers are also not parties to TOPIA 2006 but all Clubs in the International Group of P&I Clubs have amended or agreed to amend their rules to provide shipowners with cover against liability to pay indemnification under TOPIA 2006. The Agreement also authorizes Clubs to enter into ancillary arrangements enabling the Supplementary Fund to enjoy a direct right of action against the relevant Club in respect of any claim under TOPIA 2006. 30/

63. See also the discussion of voluntary collective compensation arrangements in document UNEP/CBD/BS/WG-L&R/4/INF/3 prepared for this meeting for more on STOPIA 2006 and TOPIA 2006.

Nairobi International Convention on the Removal of Wrecks, 2007

64. In May 2007, a diplomatic conference of the International Maritime Organization (IMO) adopted the text of the *Nairobi International Convention on the Removal of Wrecks, 2007* ("Nairobi Convention"). The Nairobi Convention will enter into force "twelve months following the date on which ten States have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General" of the IMO (Art. 18(1)). Information on the status of the Nairobi Convention was unavailable at the time of writing.

65. The Nairobi Convention provides States with the legal basis to remove, or have removed, shipwrecks that pose a hazard to the marine and coastal environments, amongst other things. The Nairobi Convention extends to the 'Convention area', which is defined as "the exclusive economic zone of a State Party, established in accordance with international law or, if a State Party has not established such a zone, an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured" (Art. 1(1)). Parties can also opt to extend the application of the Nairobi Convention to wrecks located within their territory including the territorial sea. If a Party does take this option, it is without prejudice to the rights and obligations of that State to take measures in relation to wrecks located in its territory, including the territorial sea, other than locating, marking and removing in accordance with the Nairobi Convention. The provisions on liability in Articles 10, 11 and 12 of the Nairobi Convention (discussed below) will not apply to any such measures except those on locating, marking and removing wrecks referred to in Articles 7, 8 and 9 of the Nairobi Convention (Article 3(2)).

66. A Party to the Nairobi Convention is to require the master and operator of a ship flying that Party's flag to report to the Affected State when the ship has been involved in a maritime casualty resulting in a wreck (Art. 5(1)). The Affected State is the State in whose Convention area the wreck is located (Art. 1(10)). Affected States can then determine whether a wreck constitutes a hazard. 'Hazard' is

30/ "Explanatory Note" to TOPIA 2006.

defined in the Nairobi Convention to mean, *inter alia*, any condition or threat that "may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or related interests of one or more States" (Art. 1(5)). Article 6 of the Nairobi Convention provides a list of criteria that should be taken into account when determining whether a wreck poses a hazard. These include:

> (d) particularly sensitive sea areas identified and, as appropriate, designated in accordance with guidelines adopted by the [International Maritime] Organization, or a clearly defined area of the exclusive economic zone where special mandatory measures have been adopted pursuant to article 211, paragraph 6, of the United Nations Convention on the Law of the Sea, 1982; …
>
> (h) nature and quantity of the wreck's cargo, the amount and types of oil (such as bunker oil and lubricating oil) on board the wreck and, in particular, the damage likely to result should the cargo or oil be released into the marine environment; …
>
> (o) any other circumstances that might necessitate the removal of the wreck.

67. An asterisk to sub-paragraph (d), quoted above, refers to the revised "Guidelines for the Identification and Designation of Particularly Sensitive Sea Areas" which were adopted by resolution A. 982(24) of the IMO Assembly during its 24th session on 1 December 2005. The revised Guidelines include a process for the designation of Particularly Sensitive Sea Areas (PSSAs) and three categories of criteria for the identification of same: ecological, socio-economic and scientific criteria. In addition to meeting at least one of the criteria, the area should also be at risk from international shipping activities for it to be designated as a PSSA. The revised Guidelines also include a process for the adoption of associated protective measures.

68. Returning to the text of the Nairobi Convention, under Article 9, having determined that a wreck constitutes a hazard, the Affected State is to immediately inform the State of the ship's registry and the registered owner and consult with the State of the ship's registry and other States affected by the wreck regarding measures to be taken in relation to the wreck. The registered owner is to remove a wreck determined to constitute a hazard and the registered owner or other interested party is to provide the competent authority of the Affected State with evidence of insurance or other financial security as required by Article 12 (discussed below). The Affected State may lay down conditions for the removal of wreck that has been determined to constitute a hazard "only to the extent necessary to ensure that the removal proceeds in a manner that is consistent with considerations of safety and protection of the marine environment" (Art. 9(4)). Furthermore, once the removal has commenced, the Affected State may intervene only to this same extent (Art. 9(5)).

69. The Affected State is to set a reasonable deadline within which the registered owner must remove the wreck taking into account the nature of the hazard determined in accordance with Article 6. The Affected State is also to inform the registered owner in writing of the deadline and specify that it (the Affected State) may remove the wreck at the registered owner's expense if the latter does not remove the wreck within the deadline. The Affected State is also to inform the registered owner in writing that it intends to intervene immediately in circumstances where the hazard becomes particularly severe. If the registered owner does not remove the wreck in accordance with the deadline set by the Affected State, or if the registered owner cannot be contacted, "the Affected State may remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment" (Art. 9(8)). State Parties are to take appropriate measures under their national laws to ensure that their registered owners comply with their obligations to remove a wreck that has been determined to constitute a hazard and to provide evidence of insurance or financial security.

70. The registered owner is strictly liable (with certain defences) for the costs of locating, marking and removing the wreck (Art. 10(1)). The registered owner will also not be liable for these costs where liability for such costs would be in conflict with other international liability conventions, namely:

- the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended;
- the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, as amended;
- the Convention on Third Party Liability in the Field of Nuclear Energy, 1960, as amended, or the Vienna Convention on Civil Liability for Nuclear Damage, 1963, as amended; or national law governing or prohibiting limitation of liability for nuclear damage; or
- the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, as amended;

provided the relevant convention is applicable and in force (Art. 11(1)).

71. Article 12 includes detailed requirements on compulsory insurance or other financial security. Paragraph 1 requires the registered owner of a ship of 300 gross tonnage and above and flying the flag of a State Party to maintain insurance or other financial security to cover liability under the Convention "in an amount equal to the limits of liability under the applicable national or international limitation regime, but in all cases not exceeding an amount calculated in accordance with article 6(1)(b) of the Convention on Limitation of Liability for Maritime Claims, 1976, as amended." When the appropriate authority of the State of the ship's registry has determined that the requirement for insurance or other financial security has been met, it will issue a certificate attesting to this fact. The certificate is to be in the form of the model certificate included in the annex to the Convention. For a ship registered in a State Party, the certificate is to be issued by the appropriate authority of the State of the ship's registry; for a ship not registered in a State Party, the certificate may be issued by the appropriate authority of any State Party. The certificate is to be carried on board the ship and a copy deposited with the authorities who keep the record of the ship's registry, or, if the ship is not registered in a State Party, with the authorities issuing or certifying the certificate. Under paragraph 13, however, ships can be exempted from the requirement of carrying the certificate on board where State Parties make their records available in an electronic format.

72. Paragraph 10 of Article 12 allows any claim for costs arising under the Convention to be brought directly against the insurer or other person providing financial security for the registered owner's liability:

> In such a case the defendant may invoke the defences (other than the bankruptcy or winding up of the registered owner) that the registered owner would have been entitled to invoke, including limitation of liability under any applicable national or international regime. Furthermore, even if the registered owner is not entitled to limit liability, the defendant may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained in accordance with paragraph 1. Moreover, the defendant may invoke the defence that the maritime casualty was caused by the willful misconduct of the registered owner, but the defendant shall not invoke any other defence, which the defendant might have been entitled to invoke in proceedings brought by the registered owner against the defendant. The defendant shall in any event have the right to require the registered owner to be joined in the proceedings.

73. A State Party is not to permit any ship entitled to fly its flag to which Article 12 applies to operate at any time unless a certificate has been issued (Art. 12(11)). Each State Party also has the obligation to ensure under its national law that insurance or other security to the extent required by Article 12(1) is in force in respect of any ship of 300 gross tonnage and above, wherever registered, entering or leaving a port of its territory, or arriving at or leaving an offshore facility in its territorial sea.

74. Article 13 creates time limits for recovering costs under the Convention. Actions must be brought within three years from the date when the hazard has been determined and no later than six years from the date of the maritime casualty that resulted in the wreck. Where a maritime casualty consists of a series of occurrences, the six-year period runs from the date of the first occurrence.

75. The Nairobi diplomatic conference adopted a 'Resolution on compulsory insurance certificates under existing maritime liability conventions, including the Nairobi International Convention on the Removal of Wrecks, 2007'. In this resolution, the conference urges IMO Member States to ensure the entry into force of a number of other liability and compensation conventions, namely:

- the 1996 International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea;

- the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage; and

- the 2002 Protocol to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea.

The conference also invites the IMO Legal Committee to develop a model for a single insurance certificate that may be issued by State Parties in respect of every ship under the relevant IMO liability and compensation conventions including the Nairobi Convention.

Annex

STATUS OF INTERNATIONAL ENVIRONMENT-RELATED LIABILITY INSTRUMENTS AS OF SEPTEMBER 2007 IN CHRONOLOGICAL ORDER OF ADOPTION

INSTRUMENTS	Date of Adoption	Number of signatures	Ratification/Acceptance /Approval/Accession	Date of Entry into force
ICAO Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface	7 October 1952	25	49	4 February 1958
• Amending Protocol	23 September 1978	14	11	25 July 2002
OECD Paris Convention on Third party Liability in the Field of Nuclear Energy	29 July 1960	18	15	1 April 1968
• Amending protocol	28 January 1964	15	15	1 April 1968
• Amending protocol	16 November 1982	15	15	1 August 1991
• Amending protocol	12 February 2004	16	None	Not in force
Supplementary Convention	31 January 1963	15	12	4 December 1974
• Amending protocol	28 January 1964	15	12	4 December 1974
• Amending protocol	16 November 1982	12	12	7 October 1988
• Amending protocol	12 February 2004	13	1	Not in force
Convention on the Liability of Operators of Nuclear Ships	25 May 1962	17	7	Not in force
IAEA Vienna Convention on Civil Liability for Nuclear Damage	21 May 1963	14	35	12 November 1977
• Amending protocol	12 September 1997	15	5	4 October 2003
Supplementary Convention	12 September 1997	13	3	Not in force
UN Convention on International Liability for Damage Caused by Space Objects	29 November 1971	25	84	1 September 1972
Convention on Civil Liability for Oil Pollution Damage resulting from the Exploration for and Exploitation of Seabed Mineral Resources	1 May 1977	6	None	Not in force

INSTRUMENTS	Date of Adoption	Number of signatures	Ratification/Acceptance /Approval/Accession	Date of Entry into force
UNECE Convention on Civil Liability for Damage Caused During Carriage of Dangerous goods by Road, Rail and Inland Navigation Vessels	10 October 1989	2	1	Not in force
IMO International Convention on Civil Liability for Oil Pollution Damage (replaced 1969 Convention)	27 November 1992	10	117	30 May 1996
• Amendment	18 October 2000	N/A	N/A	1 November 2003
Supplementary FUND Convention (replaced 1971 Convention)	27 November 1992	10	101	30 May 1996
• Amendment	18 October 2000	N/A	N/A	1 November 2003
• Protocol	16 May 2003	5	21	3 March 2005
Council of Europe Lugano Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment	21 June 1993	9	1	Not in force
IMO International Convention on Liability and Compensation in Connection with Carriage of Hazardous and Noxious Substances by Sea	3 May 1996	8	8	Not in force
Basel Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and Their Disposal	10 December 1999	13	8	Not in force
IMO International Convention on Civil Liability for Bunker Oil Pollution Damage	23 March 2001	11	16	Not in force
UNECE Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters	21 May 2003	24	1	Not in force
Antarctic Treaty System, annex VI, Liability arising from Environmental Emergencies, to the Protocol on Environmental Protection to the Antarctic Treaty	14 June 2005	N/A	1	Not in force

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